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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ASSOCIATED INTERNATIONAL INSURANCE COMPANY, Plaintiff and Respondent, v. MONTENEGRO RE, LTD., Defendant and Appellant.	B203064 (Los Angeles County Super. Ct. No. LS010948)

APPEAL from a judgment of the Superior Court of Los Angeles County. Bert Glennon, Judge. Affirmed.

Law Offices of Rick A. Cigel, Rick A. Cigel for Defendant and Appellant.

Selman • Breitman, Jeffrey C. Segal; Thorp Reed & Armstrong, William E. Cox for Plaintiff and Respondent.

Appellant Montenegro Re, Ltd. (Montenegro) appeals from a judgment denying its petition to vacate an arbitration award and granting the request by respondent Associated International Insurance Company (Associated) to confirm the arbitration award. The arbitration award resolved a dispute over the application of a reinsurance agreement.

Contrary to Montenegro's contention, the arbitrators did not exceed their authority as to the main insurance claim (the Riley claim) by allegedly violating California and Texas insurance laws and public policies. Nor did the arbitrators err in resolving the 18 additional minor insurance claims that were within the scope of the arbitration provision and were encompassed within the broadly worded, prelitigation arbitration demand. We thus affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

In 1998, Associated and Montenegro entered into a professional liability quota share reinsurance contract. Pursuant to the terms of that contract, Montenegro agreed to accept a portion of the risk incurred by Associated under a group of policies it issued to members of certain professional medical organizations. The contract also provided that "[a]ny dispute" between Associated and Montenegro "arising out of or relating to" the contract shall be settled by arbitration , and that "[t]his Contract shall be governed by and construed under the laws of the State of California."

The major claims dispute between Associated and Montenegro involved Montenegro's failure to pay as a reinsurer its share of Associated's payment of a malpractice claim against Dr. Rock Riley, a chiropractor in Texas. After Associated settled the Riley malpractice lawsuit, it submitted in November of 2000 a reinsurance billing to Montenegro for the Riley claim. The reinsurance billing also sought payment from Montenegro for 16 other much smaller claims.

After Montenegro failed to pay the Riley claim and the 16 other claims, Associated served an arbitration demand letter on July 9, 2001, to collect the balances due. As stated in the demand letter, "The issue to be submitted to arbitration is whether Montenegro should be required to make payment of all amounts now due and owing under the Reinsurance Contract, . . . [as well as] all amounts due under the Reinsurance

Contract in the future based upon accounts tendered to [Montenegro] by [Associated]." On April 23, 2002, Associated (through a new law firm) served an amended and restated arbitration demand letter on Montenegro. The April 2002 letter again requested arbitration of Montenegro's failure to make "payment of all amounts now due and owing" under the reinsurance contract, as well as of "all amounts which may come due under the Reinsurance Contract in the future based upon accounts tendered to Montenegro by [Associated]."

Montenegro declined to participate in the arbitration process, asserting that Associated did not comply with certain requirements of the arbitration agreement. In October of 2002, Associated filed a petition to compel arbitration and a supporting memorandum. In response to demurrers by Montenegro, it filed amended petitions to attempt to compel arbitration. The petitions mentioned as the dispute subject to arbitration only Montenegro's failure to pay Associated's largest claim for reinsurance, the one related to its settlement of the malpractice lawsuit against Dr. Rock Riley. Associated's petitions and supporting memoranda were silent as to the arbitration of any other specifically identified claims.

However, Associated's petitions to compel and supporting memoranda quoted the 1988 reinsurance contract's arbitration provision, which broadly identified the scope of the arbitrators' authority as extending to "[a]ny dispute or other matter in question" between the parties arising out of the contract. Also, Associated's pleadings concluded with a general request for an order compelling Montenegro to arbitrate promptly pursuant to the above quoted arbitration provision.

In May of 2003, the trial court sustained without leave to amend Montenegro's demurrer to the second amended petition to compel. Associated then pursued an appeal to this court.

While this litigation continued, in 2003 and 2004 Associated billed Montenegro for two additional minor reinsurance claims under the reinsurance contract. In total, Associated billed 19 claims to Montenegro under the reinsurance contract, one claim in

the amount of approximately $303,000 (the Riley claim) and 18 small claims, for a total claims amount of approximately $320,900.

In November of 2004, this court rendered a decision finding that "the trial court erred in granting the demurrer and that it should have granted the petition to compel arbitration." We thus reversed the judgment "with orders to the trial court to stay the matter and grant the petition to compel arbitration." The trial court did so, and in November of 2006 a five-day arbitration hearing ensued in Los Angeles with three experienced insurance industry arbitrators.

The arbitration provision in the 1998 reinsurance contract vested the arbitrators with broad discretion and provided, in pertinent part, as follows: "The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law, that is, the state law of the situs of the arbitration as herein agreed; they shall make their decisions according to the practice of the reinsurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both parties."

In February of 2007, the arbitrators issued their award and ordered Montenegro to pay to Associated $320,912.82 ($303,296.92 for the Riley claim, and $17,615.90 for all other claims), plus interest. The award also authorized Associated to draw down on a letter of credit Montenegro had established in that amount, which Associated did. Furthermore, the award directed Associated to calculate the interest due under the award, with the arbitrators retaining jurisdiction to address the interest calculations. Soon thereafter, the arbitrators issued an addendum to the award, confirming Associated's interest calculation of $256,223.36, plus per diem interest starting February 20, 2007.

Montenegro petitioned to vacate the award, and Associated replied to the petition and requested that the trial court confirm the award. On August 6, 2007, the trial court denied the petition to vacate and confirmed the award. It also entered judgment in favor of Associated as to the interest calculation. Montenegro then paid the judgment.

This appeal ensued.

DISCUSSION

I. Judicial review and general principles of arbitration.

An appeal may be taken from a judgment entered after the trial court confirms an arbitration award. (Code Civ. Proc., §§ 1287.4, 1294, subd. (d).)[1] When the parties have elected to submit to binding contractual arbitration, the court will make every effort to give effect to such proceedings. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (*Moncharsh*).) "The arbitrator's decision should be the end, not the beginning, of the dispute." (*Id.* at p. 10.) As a result, "'[t]he merits of the controversy between the parties are not subject to judicial review.'" (*Id.* at p. 11.) In brief, we cannot review the validity of the arbitrator's reasoning, nor the sufficiency of the evidence supporting the arbitrator's award, nor any errors of fact or law. (*Ibid.*)

To encourage parties to settle their disputes through a process intended to be binding, final, and relatively speedy and inexpensive, the scope of judicial review following an arbitration award is "extremely narrow." (*Marsch v. Williams* (1994) 23 Cal.App.4th 238, 243.) An arbitration award that has been confirmed by the superior court "is not subject to judicial review except on the grounds set forth in sections 1286.2 (to vacate) and 1286.6 (for correction)." (*Moncharsh*, *supra*, 3 Cal.4th at p. 33.) The reviewing court "shall confirm the award as made," unless there is a basis for correcting or vacating the award. (§ 1286.)

Here, the statutory basis alleged for vacating the award is that the arbitrator "exceeded [his] powers and the award cannot be corrected without affecting the merits of the decision." (§ 1286.2, subd. (a)(4).) (AOB 13) It is well settled that "this provision does not supply the court with a broad warrant to vacate awards the court disagrees with or believes are erroneous." (*Gueyffier v. Ann Summers, LTD.* (2008) 43 Cal.4th 1179, 1184.)

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[1] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

"When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. [Citations.] Inherent in that power is the possibility the arbitrator may err in deciding some aspect of the case. Arbitrators do not ordinarily exceed their contractually created powers simply by reaching an erroneous conclusion on a contested issue of law or fact, and arbitral awards may not ordinarily be vacated because of such error, for '"[t]he arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement."' [Citation.]" (*Gueyffier v. Ann Summers, LTD., supra*, 43 Cal.4th at p. 1184.)

Moreover, consistent with the fundamental nature of the arbitration process, arbitrators may apply both legal and equitable principles and, unless specifically required to act in conformity with the rules of law, arbitrators may act contrary to substantive law and base their decisions upon broad principles of justice and equity. (*Sapp v. Barenfeld* (1949) 34 Cal.2d 515, 523; *Woodard v. Southern Cal. Permanente Medical Group* (1985) 171 Cal.App.3d 656, 662.) "The entire statutory arbitration scheme is designed to give the arbitrator the broadest possible powers." (*Marcus v. Superior Court* (1977) 75 Cal.App.3d 204, 210.)

"[I]n reviewing a judgment confirming an arbitration award, we must accept the trial court's findings of fact if substantial evidence supports them, and we must draw every reasonable inference to support the award. [Citation.] On issues concerning whether the arbitrator exceeded his powers, we review the trial court's decision de novo, but we must give substantial deference to the arbitrator's own assessment of his contractual authority." (*Alexander v. Blue Cross of California* (2001) 88 Cal.App.4th 1082, 1087.)

An arbitration award generally may *not* be overturned simply because a court believes that the arbitrators committed legal or factual error. (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 908.) Nor may an award be vacated even if it contains a legal or factual error on its face that causes substantial injustice. (*Moncharsh, supra,* 3 Cal.4th at

pp. 27-28.) Thus, even the erroneous resolution of a legal or factual issue by the arbitrator generally may not be overturned "so long as the issue was within the scope of the controversy submitted to the arbitrators." (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775.)

II. The arbitrators' decision was well within the scope of their authority under the parties' arbitration agreement.

A. Montenegro's attack on the Riley claim.

Montenegro attempts to undo the arbitration award by claiming that the "arbitrators exceeded their powers." (§ 1286.2, subd. (a)(4).) Montenegro acknowledges the limited judicial review of arbitration awards, but asserts that courts must scrutinize arbitration awards where "granting finality to an arbitrator's decision would be inconsistent with the protection of a party's statutory rights," or where the award contravenes "an explicit legislative expression of public policy." (*Moncharsh, supra,* 3 Cal.4th at p. 32; see also *City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 334, 337-340.) According to Montenegro, the award is incompatible with statutory rights and contravenes public policy both under Texas and California laws, and the arbitrators engaged in wholesale disregard of the laws of both states.

Montenegro's attack upon the arbitration award is meritless. First, Montenegro reads *Moncharsh* far too broadly. "Absent a clear expression of illegality or public policy undermining [the] strong presumption in favor of private arbitration, an arbitral award should ordinarily stand immune from judicial scrutiny." (*Moncharsh, supra*, at p. 32.) Similarly, absent "an explicit legislative expression of public policy" (*ibid.*), the award must stand. The illegality exception to the finality of arbitration awards is narrow and limited to "'*where the issue of illegality of the entire transaction* is raised in a proceeding for the enforcement of the arbitrator's award."' (*Id.* at p. 31, original italics.) Such a situation exists, for example, where the lack of a requisite business license deprives a party by explicit statute of the right to *any* recovery whatsoever. (*Id.* at pp. 31-32.) In such a case, judicial review of the arbitrator's ruling is permitted because "the

entire contract or transaction was illegal." (*Id.* at p. 32.) Montenegro asserts no such sweeping and total statutory illegality here.

Rather, Montenegro alleges only ordinary statutory violations and general notions of public policy. For example, Montenegro asserts that general principles of California law and policy on contract interpretation (see Civ. Code, §§ 1638, 1639 [codifying basic contract interpretation principles]; Ins. Code, § 620 [defining a contract of reinsurance]) were violated, and that it has no reinsurance obligation under a properly interpreted contract. According to Montenegro, the Riley claim was not covered by the reinsurance contract because (1) the reinsurance contract was limited to California risks and would not cover a situation in Texas, (2) the reinsurance contract had been cancelled and thus purportedly could not cover the Riley claim, and (3) notice of the Riley claim was purportedly not timely (see Ins. Code, § 622).

Montenegro also asserts that any insurance supposedly issued by Associated to Dr. Riley was illegal under Texas law, and that the judgment based on the award is "directly hostile to vital Texas statutes and public policy." Apart from Montenegro's failure to present any supporting evidence to the arbitrators from, for example, the Texas Insurance Department or the surplus lines broker, and Associated's supporting testimonial evidence of compliance with Texas law, Montenegro merely seeks to relitigate compliance with Texas insurance laws. Also, to the extent Texas statutes address a state policy of protecting Texas residents from insurers who do not comply with Texas law, there was no violation of any public policy protecting Dr. Riley (a Texas resident) because Associated paid under its policy limits to settle the malpractice claim against him.

In essence, Montenegro's argument is that the arbitrators did not interpret the reinsurance contract as it wanted them to interpret it. However, relitigating insurance code provisions and relying on general statutes that simply codify basic principles of law do not justify an argument that the arbitrators exceeded their authority.

Nor is Montenegro's position supported by its reliance on the choice of law provision in the 1988 reinsurance agreement, whereby "This contract is to be governed by and construed under the laws of the State of California." According to Montenegro,

this provision means that the arbitrators were not free to ignore California law. However, the provision reads merely that the *contract* is governed by California law, not the arbitrators. Construing the arbitration clause in the contract under California law, we hark back to the "principle of arbitral finality [that] forbids judicial inquiry into the legal correctness of the arbitrator's decisions." (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 390.) Thus, an arbitrator's award "generally may not be vacated or corrected, under California law, for errors of fact or law." (*Id.* at p. 377, fn. 10.)

Montenegro apparently ignores the well-settled principle that arbitrators do not exceed their powers even if their decision is based on erroneous legal reasoning. "A contrary holding would permit the exception to swallow the rule of limited judicial review; a litigant could always contend the arbitrator erred and thus exceeded his powers." (*Moncharsh, supra*, 3 Cal.4th at p. 28.)

Accordingly, the arbitrators' decision as to the Riley claim was well within the scope of their powers (§ 1286.2, subd. (a)(4)) under the arbitration clause in the reinsurance contract. The judgment of the superior court confirming the award as to the Riley claim must be affirmed.

B. *Montenegro's attack on the 18 additional claims as not properly the subject of the arbitration.*

Montenegro contends that the 18 other smaller claims (totaling $17,615.90) were never properly the subject of the arbitration, and that the arbitrators' determination to the contrary is grounds to vacate the award. The contention is unavailing.

According to Montenegro, the scope of the controversy to be submitted to the arbitrators was defined by the controversy specified in the petition to compel arbitration, and Associated's second amended petition to compel only identified the Riley claim. Thus, Montenegro reasons that the arbitrators had no right or authority to expand the trial court's order directing arbitration by forcing the arbitration of 18 other claims.

There are several problems with Montenegro's argument. Most significantly, Montenegro fails to appreciate that the petition to compel arbitration does not define the scope of the arbitrators' authority. The range of issues that can properly be brought

before the arbitrators, and thus the scope of their authority, is defined by the prelitigation arbitration agreement. The focus is "whether the party seeking arbitration is making a claim which on its face is governed by the contract." (*Steelworkers v. American Mfg. Co.* (1960) 363 U.S. 564, 568.) The bottom line is whether the asserted dispute is covered by the agreement, with all doubts resolved in favor of coverage. (*Butchers' Union Local 229 v. Cudahy Packing Co.* (1967) 66 Cal.2d 925, 931.)

Here, the arbitration clause covers "[a]ny dispute" between the parties arising out of the reinsurance contract. The 18 additional claims are thus within the scope of the arbitration clause. We also note that Associated's arbitration demand letter in July of 2001 requested arbitration to collect "all amounts now due and owing under the Reinsurance Contract, "further indicating the broad scope of the arbitration.

Montenegro emphasizes that the Riley claim was the only claim specifically described in Associated's petition to compel arbitration. However, the petition to compel and the supporting memorandum also quoted the 1988 reinsurance contract's arbitration provision, which broadly identified the scope of the arbitrators' authority as extending to "[a]ny dispute or other matter in question" between the parties arising out of the contract. And, the proposed order submitted with the petition specifically sought arbitration of "[a]ll disputes now between the parties" arising from the reinsurance contract and declared that the arbitrators were "authorized to hear and decide all disputes between the parties."

Moreover, the November 2004 decision of this court discussed the Riley claim, but broadly concluded that the trial court had erred in granting the demurrer and should have granted the petition to compel arbitration. Without reference to the Riley claim or any other limitation, we reversed the judgment and ordered the trial court to "grant the petition to compel arbitration."

Finally, Montenegro points to Associated's notice of the arbitration hearing (see §§ 1010, 1290.2), which requested the "arbitration [of] all controversies specified in the petition." Although the Riley claim was the only one actually specified by name in the petition, as previously noted, the proposed order submitted with the petition sought

arbitration of "[a]ll disputes now between the parties" arising from the reinsurance contract. Hence, the notice of the arbitration hearing was not fatally flawed. In any event, Montenegro does not claim that the purportedly inadequate notice somehow prejudiced its ability to defend itself on the merits of those 18 minor claims.

Accordingly, the 18 additional claims were properly the subject of the arbitration hearing. The arbitrators' decision was well within the scope of their authority under the arbitration clause, and the judgment of the superior court confirming the arbitration award as to those claims must be affirmed.[2]

DISPOSITION

The judgment is affirmed. Associated's motion to impose sanctions is denied. Montenegro to bear costs on appeal.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.

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[2] In a separate motion before this court, Associated has requested that we impose sanctions against Montenegro and its attorneys for an appeal that is frivolous or taken solely for delay. (See § 907; Cal. Rules of Court, rule 8.276(a)(1).)

Although Montenegro's contentions on appeal are unavailing, we are reluctant to characterize its contention concerning the 18 additional claims as "indisputably" without merit. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650; compare *Harris v. Sandro* (2002) 96 Cal.App.4th 1310, 1315 ["Given the clarity and frequency with which our Supreme Court has rejected attempts to obtain judicial review of arbitration awards, no reasonable attorney could have concluded otherwise"].) Nor is it apparent that the appeal was taken "solely" (§ 907) for delay. We thus generously exercise our discretion and deny the motion to impose sanctions.